NORMAN G. NAUNI, Appellant	:	Order Affirming Decision
v.	:	
	:	Docket No. IBIA 96-113-A
ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 2, 1998

Appellant Norman G. Nauni seeks review of a July 10, 1996, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA). The Area Director's decision reversed the approval of Business Lease #910033 (Lease), covering 2 acres of Comanche Allotment No. 1651. The Lease had been approved on August 21, 1995, by the Superintendent, Anadarko Agency, BIA (Superintendent; Agency). For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Area Director's decision.

The involved factual background of this matter is set forth at pages 2-5 of the Area Director's July 10, 1996, decision. These facts will not be repeated here, except as they are necessary to an understanding of this decision.

When the Lease was approved, Comanche Allotment No. 1651 was owned by 90 individuals and the Comanche Tribe. The Lease was for the purpose of operating a smoke shop.

Eight of the individual owners of the allotment appealed from the Superintendent's approval of the Lease. The Area Director's decision essentially reversed the approval of the Lease because of substantial irregularities committed by Appellant and the Agency in the Lease negotiation, advertisement, and approval processes.

Appellant appealed the Area Director's decision to the Board, but did not file an opening brief. Several of the individual landowners filed responses to Appellant's Notice of Appeal.

Appellant's Notice of Appeal contains five reasons for his challenge to the Area Director's decision. Appellant first contends that the Area Director erred in holding that the lease availability was advertised only in one newspaper, i.e., the Anadarko Daily News. As proof that the availability of the lease was advertised in two newspapers, Appellant submits what appears to be a publication concerning the lease availability from the Lawton Constitution.

The photocopied notice submitted by Appellant appears to be genuine. However, that notice differs from the notice published in the Anadarko Daily

News. The notice from the Anadarko Daily News stated that the bids would be opened on May 22, 1996; while the notice apparently from the Lawton Constitution stated that the bids would be opened on May 28, 1996. The Board does not know the significance, if any, of this discrepancy. However, it does know that there is absolutely nothing in the record provided to the Area Director by the Superintendent which shows that the Superintendent published the notice of lease availability in the Lawton Constitution. The Area Director specifically required the Superintendent to provide all proof of publication, in whatever form it was available. Considering the Superintendent's failure to provide any proof of publication in the Lawton Constitution, or even to reference publication in a newspaper(s) other than the Anadarko Daily News, the Board cannot hold that it has been shown that the Superintendent published notice of the availability of the lease in the Lawton Constitution.

Appellant next argues that the Area Director incorrectly found that he had not made contact with the landowners during the 90-day negotiation period prior to the advertisement of the lease. Appellant provides a copy of a letter which he states he sent "to each landowner that possessed a large percent of land interest" in the allotment. Notice of Appeal at 1.

Appellant misses the point. He was required to attempt to negotiate a lease with all of the landowners, not with only those he determined owned "a large percent" of the interests in the allotment. Appellant does not identify the landowners whom he actually contacted or provide proof that these individuals owned "a large percent" of the interests in the allotment. The Board finds that Appellant has not shown that he contacted all of the landowners about negotiating a lease prior to the advertisement.

Appellant's third contention is that the Area Director erred in holding that he had not submitted proof of insurance coverage. In support of this argument, Appellant submits a copy of a temporary insurance policy, covering the one-month period from what appears to be August 8, 1995, through September 8, 1995, and an unsigned copy of a policy covering the period of August 8, 1995, through August 8, 1996.

Initially, there is no evidence that the one-year policy was ever in effect, or that it was submitted to BIA before the Area Director issued his decision. This policy is not in the administrative record. However, even if the Board were to give Appellant the benefit of the doubt on this issue, it would not be sufficient in itself to cause the Board to reverse the Area Director's decision.

Appellant next states that the Area Director held that BIA failed to review the contract. Appellant argues: "This procedure is not a requirement of the lessee or the lessor. Therefore, I question why a lessee should be held accountable for the [BIA's] responsibilities." Notice of Appeal at 2.

Trust land cannot be leased without the approval of BIA. As trustee for the Indian landowners, BIA is required by statute, regulation, and judicial decision to ensure that any lease of trust land is in the best interests of the Indian landowners. The approval of a lease may be reversed or

vacated when it is shown that BIA failed properly to discharge its responsibilities before approving the lease. See, e.g., Moses v. Acting Portland Area Director, 24 IBIA 233 (1993).

Appellant's final argument is that he made payments to the landowners in August and October 1995, in reliance on the Superintendent's approval of the Lease. Because Appellant does not develop this contention further, it is not clear what he is actually arguing. As it has stated on several occasions, the Board is not required to make an appellant's argument for him. See, e.g., Elliott v. Portland Area Director, 31 IBIA 287, 293 (1997), and cases cited therein. In any event, to the extent that Appellant received the benefit of the lease, he cannot claim to be entitled to any refund of rent he paid in 1995.

The Board concludes that Appellant has failed to show error in the Area Director's decision. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Anadarko Area Director's July 10, 1996, decision is affirmed.

Kathryn A. Lynn	Anita Vogt
Chief Administrative Judge	Administrative Judge

1/ The Area Director's decision contains several additional findings which Appellant did not address. These findings include, but are not limited to: (1) the 90-day notices sent by the Agency to the landowners did not contain any information concerning Appellant's offer to negotiate a lease, and the record indicates that only three of the landowners were even aware of Appellant's offer during the 90-day negotiation period (see, Peace Pipe, Inc. v. Acting Muskogee Area Director, 22 IBIA 1 (1992), aff'd, Pipes, Inc. v. United States, No. 92-C-373-B (N.D. Okla. Dec. 4, 1992) (holding that BIA did not have authority to issue a lease on behalf of non-consenting heirs when there was no evidence that, during the 90-day negotiation period, all of the heirs were aware that an offer to lease had been made)); (2) Appellant's revised bid was submitted after the closing date for receipt of bids; (3) the invitation to bid was not sent to other persons known to the Agency who might have been interested in leasing the allotment for the same purpose as Appellant; (4) there was no proof that the Agency considered alternative uses of the allotment that might have generated more income for the owners; (5) as approved, the Lease was for a period of 5 years, with a right in Appellant to renew for an additional 5 years with no reference to a review of the rental rate at the end of 5 years, as required by 25 C.F.R. § 162.8; and (6) the bond required by 25 C.F.R. § 162.5(c) was waived by the Superintendent. Taken alone, each of these findings raises serious questions about the approval of this Lease. Taken together, they clearly warrant reversal of the approval.